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UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JIMMI BROWN,

Plaintiff,

v.

MIDLAND FUNDING, LLC, MIDLAND
 CREDIT MANAGEMENT, INC; and
 ENCORE CAPITAL GROUP, INC.,

Defendants.

) Case No.: '11 CV 2538

) COMPLAINT FOR DAMAGES

) 1. VIOLATION OF THE FAIR DEBT
) COLLECTION PRACTICES ACT, 15

) U.S.C. §1692 ET. SEQ.;

) 2. VIOLATION OF THE ROSENTHAL
) FAIR DEBT COLLECTION PRACTICES
) ACT, CAL. CIV. CODE §1788 ET. SEQ.

) JURY TRIAL DEMANDED

COMPLAINT

JIMMI BROWN ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against MIDLAND FUNDING, LLC ("Midland"), MIDLAND CREDIT MANAGEMENT, INC. ("MCM"); and ENCORE CAPITAL GROUP, INC. ("Encore") (collectively referred to as "Defendants"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, cal. Civ. Code §1788, *et. seq.* ("RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

CR

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendants conduct business in the State of California and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Stetson, Maine 04488.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3) and is a “debtor” as defined by Cal. Civ. Code §1788.2(h).

8. Defendant Midland is a corporation specializing in debt collection with its principal place of business located at 8875 Aero Drive, San Diego, CA 92123.

9. Defendant MCM is a corporation specializing in debt collection with its principal place of business located at 5775 Roscoe Court, San Diego, CA 92123.

10. Defendant Encore is a corporation specializing in debt collection with its principal place of business located at 8875 Aero Drive, San Diego, CA 92123.

11. Defendants are “debt collectors” as that term is defined by 15 U.S.C. §1692a(6), and RFDCPA, Cal. Civ. Code §1788.2(c).

1 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
2 connection with the collection of a debt.

3 15. In enacting the FDCPA, the United States Congress found that “[t]here is
4 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
5 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
6 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
7 additionally found existing laws and procedures for redressing debt collection injuries to be
8 inadequate to protect consumers. 15 U.S.C. § 1692b.

9
10 16. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
11 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
12 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
13 collection practices are not competitively disadvantaged, and to promote consistent State action
14 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

15
16 **FACTUAL ALLEGATIONS**

17 17. At all relevant times, Defendants were acting collectively, and attempting to
18 collect an alleged consumer debt from Plaintiff as the term is defined by the FDCPA at 15
19 U.S.C. § 1692a(5) and the RFDCPA at Cal. Civ. Code §1788.2(f).

20
21 18. The alleged debt at issue derives from a Household Bank account, and arose out
22 of transactions which were primarily for personal, family, or household purposes.

23 19. Based upon information and belief, at all times relevant Defendant MCM was
24 acting on behalf of Defendants Midland and Encore in attempting to collect this alleged debt.

25 20. Plaintiff paid off all amounts owed for the Household Bank account in or around

1 2006, and disputes owing this debt in its entirety.

2 21. Throughout 2011, Defendants' representatives placed excessive telephone calls
3 to Plaintiff on a near-daily basis, attempting to collect this debt that Plaintiff does not owe.

4 22. Plaintiff has told Defendants' representatives on numerous occasions that he does
5 not owe the debt.

6 23. Between June and August of 2011, Defendants' representatives placed numerous
7 telephone calls to Plaintiff's place of employment.

8 24. Plaintiff spoke with a "supervisor" during one telephone call and demanded that
9 Defendants not call him at his place of employment; the "supervisor" promised that such calls to
10 Plaintiff's place of employment would stop.

11 25. Despite the promise made by the "supervisor", and Plaintiff's demands that the
12 calls to his place of employment stop, Defendants' representatives continued to call Plaintiff at
13 his place of employment.

14 26. Defendants' actions as described herein were made with the intent to harass,
15 abuse, deceive, upset and coerce payment from Plaintiff for a debt he does not owe.
16

17
18 **CONSTRUCTION OF APPLICABLE LAW**

19 27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
20 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
21 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
22 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
23 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
24 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
25

1 28. The FDCPA is a remedial statute, and therefore must be construed liberally in
2 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
3 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
4 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
5 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
6 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
7 2002).

8
9 29. The FDCPA is to be interpreted in accordance with the “least sophisticated”
10 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
11 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
12 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
13 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
14 and the fact that a false statement may be obviously false to those who are trained and
15 experienced does not change its character, nor take away its power to deceive others less
16 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
17 ensures protection of all consumers, even naive and trusting, against deceptive collection
18 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
19 collection notices. Clomon, 988 F. 2d at 1318.
20

21
22 **COUNT I**
23 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

24 30. Plaintiff reincorporates by reference all of the preceding paragraphs.

25 31. In its actions to collect a disputed debt, Defendants violated the FDCPA in one
or more of the following ways:

- a. Defendants violated of the FDCPA generally;
- b. Defendants violated § 1692c(a)(3) of the FDCPA by placing repeated telephone calls to Plaintiff at his place of employment, despite his repeated demands that such calls cease;
- c. Defendants violated § 1692d of the FDCPA by harassing Plaintiff, in connection with the collection of the alleged debt;
- d. Defendants violated § 1692d(5) of the FDCPA by causing Plaintiff's telephone to ring repeatedly;
- e. Defendants violated § 1692e of the FDCPA by acting in a way that is deceptive and misleading;
- f. Defendants violated § 1692e(2) of the FDCPA by making a false representation of the amount owed;
- g. Defendants violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt; and
- h. Defendants acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

COUNT II
DEFENDANT VIOLATED THE
ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

32. Plaintiff reincorporates by reference all of the preceding paragraphs.

33. In its actions to collect a disputed debt, Defendants violated the RFDCPA in one or more of the following ways:

- 1 a. Defendants violated Cal. Civ. Code §1788.17, which mandates that every debt
2 collector collecting or attempting to collect a consumer debt shall comply with
3 the provisions of Sections 1692b to 1692j of the FDCPA inclusive.
4

5 WHEREFORE, Plaintiff, JIMMI BROWN, respectfully pray for a judgment as follows:

- 6 a. Actual Damages;
7 b. Statutory damages;
8 c. Reasonable attorney's fees and costs;
9 d. Any other relief deemed appropriate by this Honorable Court.
10

11 **DEMAND FOR JURY TRIAL**
12

13 PLEASE TAKE NOTICE that Plaintiff, JIMMI BROWN, demands a jury trial in this
14 case.
15

16
17 DATED: 10/25/2011

18 RESPECTFULLY SUBMITTED,

19 KIMMEL & SILVERMAN, P.C..

20 By: 

Amy L. Bennecoff (275805)

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Attorney for Plaintiff
23
24
25

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JIMMI BROWN

(b) County of Residence of First Listed Plaintiff outside State
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

AMY L. BENNECOFF, ESQUIRE, KIMMEL & SILVERMAN, P.C.,
30 East Butler Avenue, Ambler, PA 19002; (215)540-8888

DEFENDANTS

MIDLAND FUNDING, LLC, MIDLAND CREDIT
MANAGEMENT, INC. and ENCORE CAPITAL GROUP, INC.

County of Residence of First Listed Defendant

NOTE: IN LAND CONVEYANCE CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692k

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/25/2011

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

11-01-11

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS031993
Cashier ID: mbain
Transaction Date: 11/01/2011
Payer Name: KIMMEL SILVERMAN

CIVIL FILING FEE
For: BROWN V MIDLAND FUNDING
Case/Party: D-CAS-3-11-CV-002538-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1340
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.